

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

ANDREW TOM,

Appellant,

v.

DEPARTMENT OF ECOLOGY,

Respondent.

) Case No. RULE-01-0020

)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** Pursuant to RCW 41.64.060 and WAC 358-01-040, this appeal came on for hearing before the Personnel Appeals Board, GERALD L. MORGEN, Vice Chair. The hearing was held at the office of the Attorney General, W. 1116 Riverside Avenue, Spokane, Washington, on May 21, 2002. RENÉ EWING, Member, reviewed the file, exhibits and record proceedings and participated in the decision in this matter. WALTER T. HUBBARD, Chair, did not participate in the hearing or in the decision in this matter.

1.2 **Appearances.** Appellant Andrew Tom appeared *pro se*. Stewart A. Johnston, Assistant Attorney General, represented Respondent Department of Ecology.

1.3 **Nature of Appeal.** This is an appeal of a rule violation in which Appellant alleges that the department selected an employee for a position for which she did not have the necessary experience or expertise to fulfill the requirements of the job.

1.4 **Citations Discussed.** WAC 358-30-170; WAC 356-26-060; WAC 356-30-007.

II. FINDINGS OF FACT

2.1 Appellant is an Environmental Engineer 3 and permanent employee for Respondent Department of Ecology. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on August 9, 2001.

2.2 In June 2001, Appellant applied for and tested for an Environmental Engineer 4 (unit supervisor) position.

2.3 The Department of Personnel subsequently certified and referred to the Department of Ecology the names of three candidates that received qualifying scores and were on the Environmental Engineer 4 register: Appellant; Elizabeth Brown; and Fenggang Ma. After receiving the list of referrals, the department scheduled interviews with each of the candidates.

2.4 The department engaged in panel interviews with each of the candidates. The candidates were asked the same questions and their responses were scored. The interviewing panel ultimately agreed that Ms. Brown was the most qualified candidate. Ms. Brown was offered and she subsequently accepted the Environmental Engineer (EE) 4 position.

2.5 On July 18, 2001, Appellant was informed that another individual had been appointed to the EE 4 position.

2.6 On August 2, 2001, Appellant filed an appeal alleging that the Department of Ecology violated RCW 49.44.090; 49.60.010; 49.60.210; 49.60.400; and WAC 356-30-10 (sic) in connection to the appointment of the employee to the Environmental Engineer 4 position. Appellant alleged the department's actions were retaliatory. Appellant asserted that he was adversely affected by the alleged violations because he was deprived of the opportunity to fairly compete for the job because the department had predetermined to hire the other individual. As a

1 remedy, Appellant requested that his position be reallocated to the Environmental Engineer 4
2 classification.

3 2.7 At the outset of the hearing, Appellant clarified that he was limiting the scope of his appeal
4 to the sole issue of whether Ms. Brown was qualified to be an EE 4.
5

6 **III. ARGUMENTS OF THE PARTIES**

7 3.1 Appellant argues that Ms. Brown was not qualified to perform the duties and responsibilities
8 of the EE 4 position. Appellant asserts that during the interview process, a majority of the questions
9 asked were related to personnel issues, but that the position actually requires that the incumbent
10 perform a significant number of technical duties. Appellant asserts that Ms. Brown lacks technical
11 knowledge and experience to perform the EE 4 duties and that she has no permit issuing experience,
12 which is a responsibility also required of the position. Appellant asserts that the hiring process was
13 flawed and skewed which prevented him, the most qualified candidate based on his technical
14 experience, not being offered the job.
15

16 3.2 Respondent argues that the recruitment, interviewing and appointment for the position of
17 Environmental Engineer 4 was a fair process and did not violate rules. Respondent argues that
18 Appellant has failed to meet his burden of proving that any violation of the rules occurred.
19 Respondent argues that once the Department of Personnel certified three names from the
20 appropriate register, it was within management's discretion to choose the best-qualified candidate.
21 Respondent asserts that Appellant received a fair chance to compete for the position and that his
22 belief that the hiring process was manipulated is unfounded.

23 **IV. CONCLUSIONS OF LAW**

24 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter
25 herein.
26

1 4.2 In an appeal of an alleged rule violation, Appellant has the burden of proof. (WAC 358-30-
2 170).

3
4 4. Appellant's main allegation is that Ms. Brown does not have the training, expertise or
5 experience to perform the duties of the Environmental Engineer 4 position and that the questions
6 asked during the interviewing process failed to emphasize the technical knowledge and skills he
7 believes are required to successfully carry out the duties of the position. However, these issues are
8 not properly before us.

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10 4. The evidence supports that the Department of Ecology received a list of candidates certified
11 to the Environment Engineer 4 register by the Department of Personnel as required by WAC 356-
12 26-060. WAC 356-30-007 provides that the appointing authority, or a designee, has the authority to
13 appoint persons to be employees of their agency. Therefore, it was within management's discretion
14 to select the candidate best qualified for the EE 4 position. Appellant has failed to meet his burden
15 of proving that Respondent failed to comply with the merit system rules regarding the appointment
16 of Ms. Brown to the position of Environmental Engineer 4. Therefore, his appeal should be denied.

17 **V. ORDER**

18 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Andrew Tom is denied.

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20 DATED this _____ day of _____, 2002.

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22 WASHINGTON STATE PERSONNEL APPEALS BOARD

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24 _____
Gerald L. Morgen, Vice Chair

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26 _____
René Ewing, Member

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